

APPLICATION FOR INITIATIVE OR REFERENDUM PETITION SERIAL NUMBER

Secretary of State
1700 W. Washington Street, 7th Floor
Phoenix, AZ 85007

The undersigned intends to circulate and file an INITIATIVE or a REFERENDUM (circle the appropriate word) petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Pursuant to Arizona Revised Statutes § 19-111, attached hereto is the full text, in no less than eight point type, of the MEASURE or CONSTITUTIONAL AMENDMENT (circle appropriate word) intended to be INITIATED or REFERRED (circle appropriate word) at the next general election.

SUMMARY: A description of no more than one hundred words of the principal provisions of the proposed law, constitutional amendment or measure that will appear in no less than eight point type on the face of each petition signature sheet to be circulated.

SMART PRISON POPULATION ACT

This law will amend the existing home arrest law to require non-violent prisoners to be released to home detention with mandatory global position electronic monitoring after the prisoner first completes one-quarter (1/4) of the maximum imposed sentence. The law will force prisoners, who pose little or no public safety threat, to pay for their own home detention and save the State of Arizona the expense of their incarceration in prisons.

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Date of Application September 28, 2011
Signatures Required 172,809
Deadline for Filing July 5, 2012
Serial Number Issued I-05-2012

FOR OFFICE USE ONLY

Revised 11/92

CFID# 201200203

IN PROCESS OF Filing
STATEMENT OF ORGANIZATION
FOX PETITIONS SUPPORTING Smart Prison
Population Act
FOX PETITIONS

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2011 SEP 28 PM 1:07

SECRETARY OF STATE

OFFICIAL TITLE

AMENDING SECTION 41-1604.13, ARIZONA REVISED STATUTES, RELATING TO TRANSFER OF CERTAIN INMATES TO HOME DETENTION.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the people of the state of Arizona:

Section 1. Title.

This act may be cited as the "Smart Prison Population Act."

Section 2. Findings.

The People of Arizona find and declare the following:

As found in the State of Arizona Office of the Auditor General's 2010 Report No. 10-08 concerning Prison Population Growth, the State's population has doubled in the past 30 years, but the State's prison population has increased tenfold to 40,477 inmates in June 2010. Arizona's prison growth rate exceeded that of every other western state between 2000 and 2008. Arizona's incarceration rate has continued to increase even though the crime rate has declined since the mid-1990s. Without alternatives to imprisonment, the State's prison population is expected to continue to increase, growing to nearly 50,000 inmates by 2016.

The State Legislature has appropriated \$949 million in State General Fund monies to the Department of Corrections for fiscal year 2011, representing 11.2% of the State General Fund budget, compared with only 4.3% in 1979, and it trails only K-12 education and healthcare appropriations.

As of December 31, 2009, offenders for property crimes accounted for 23% of the prison population, and drug offenders accounted for 20.5% of the prison population.

Arizona state laws largely determine how long an offender is imprisoned.

Other than Arizona, only a few states require their non-violent offenders to serve a substantial portion of their sentences. Other states that have used home detention with electronic monitoring for non-violent offenders have reduced corrections spending without negatively impacting recidivism. Additionally, home detention with electronic monitoring allows non-violent offenders to remain active community members who can work to assist their families and pay victim restitution.

Placing more inmates on home detention with electronic monitoring would reduce prison costs. Depending on the contributions from participants, the daily cost of the program would be less than the marginal cost of a day in prison. In addition, more savings would be realized if enough inmates were diverted to close a prison unit.

State law should expand eligibility for the existing home detention program to shift the costs of incarceration from the State to the inmates. Therefore, the purpose of this Act is to expand existing state laws to mandate transfer of certain non-violent offenders who satisfy the prescribed criteria to the home detention program.

Section 3. Section 41-1604.13, Arizona Revised Statutes, is amended to read:

41-1604.13. Home DETENTION ~~arrest~~; eligibility; EXPENSE ~~victim notification~~; conditions; applicability; definitions
A. NOTWITHSTANDING ANY LAW TO THE CONTRARY, AN INMATE SHALL BE RELEASED TO THE HOME DETENTION. ~~An inmate who has served not less than six months of the sentence imposed by the court is eligible for the home-arrest program if the inmate:~~

1. Meets the following criteria:

- (a) Was not convicted of committing a class 1, 4, 5 or 6 felony ~~not involving a dangerous offense~~ OR A FELONY INVOLVING THE INTENTIONAL OR KNOWING INFLECTION OF SERIOUS PHYSICAL INJURY OR THE USE OR EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT.
- (b) Was not convicted of a sexual offense PURSUANT TO SECTION 13-1404, 13-1405, 13-1406 OR 13-1410.
- (c) HAS SERVED NOT LESS THAN ONE-QUARTER OF THE SENTENCE OF INCARCERATION IMPOSED BY THE COURT ~~has not previously been convicted of any felony.~~
- (d) IS A CITIZEN OF THE UNITED STATES.
- (e) HAS ACCESS TO A SUITABLE RESIDENCE.

2. Violated parole by the commission of a technical violation that was not chargeable or indictable as a criminal offense.

3. Is eligible for work furlough.

~~4. Is eligible for parole pursuant to section 31-412, subsection A.~~

B. The board of executive clemency shall determine which inmates are released to the home DETENTION ~~arrest~~ program based SOLELY on the criteria in subsection A of this section and AFTER WRITTEN APPLICATION FROM THE INMATE based on a determination that there is a substantial probability that the inmate will remain at liberty without violating the law and that the release is in the best interest of the state after considering the offense for which the inmate is presently incarcerated, the prior record of the inmate, the conduct of the inmate while incarcerated and any other information concerning the inmate that is in the possession of the state department of corrections, including any presentence report.

2011 SEP 28 PM 1:08

SECRETARY OF STATE

THE BOARD'S DETERMINATION SHALL BE MADE WITHIN 30 DAYS OF THE SUBMITTAL OF THE WRITTEN APPLICATION. The board maintains the responsibility of revocation as applicable to all parolees.

C. THE DEPARTMENT SHALL PRESCRIBE A WRITTEN APPLICATION AND SHALL PROVIDE THE APPLICATION TO ALL INMATES WHO ARE ELIGIBLE FOR THE HOME DETENTION PROGRAM BASED ON THE CRITERIA IN SUBSECTION A OF THIS SECTION ~~An inmate who is otherwise eligible for home arrest, who is not on work furlough and who is currently serving a sentence for a conviction of a serious offense or conspiracy to commit or attempt to commit a serious offense shall not be granted home arrest except by one of the following votes:~~

- ~~1. A majority affirmative vote if four or more members of the board of executive clemency consider the action.~~
- ~~2. A unanimous affirmative vote if three members of the board of executive clemency consider the action.~~
- ~~3. A unanimous affirmative vote if two members of the board of executive clemency consider the action pursuant to section 31-401, subsection I and the chairman of the board concurs after reviewing the information considered by the two members.~~

D. NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE DEPARTMENT SHALL RELEASE THE INMATE FROM INCARCERATION TO THE HOME DETENTION PROGRAM WITHIN 30 DAYS OF THE BOARD'S DETERMINATION THAT THE INMATE IS ELIGIBLE FOR THE HOME DETENTION PROGRAM.

E. AN INMATE'S PARTICIPATION IN THE HOME DETENTION PROGRAM IS CONDITIONED ON THE INMATE'S ASSENT TO THE FOLLOWING ~~Home arrest is conditioned on the following:~~

- ~~1. Active GLOBAL POSITION electronic monitoring surveillance for a minimum of one year or until eligible for general parole.~~
- ~~2. Participation in gainful employment or other beneficial activities AS APPROVED BY THE SUPERVISING CORRECTIONS OFFICER.~~
- ~~3. NO CONSUMPTION OF SUBSTANCES OR PARTICIPATION IN ACTIVITIES THAT WERE THE UNDERLYING CONDUCT FOR THE PRISONER'S CURRENT OR PRIOR FELONY CONVICTIONS. THE PROHIBITED SUBSTANCES AND ACTIVITIES FOR EACH PRISONER SHALL BE DETERMINED BY THE BOARD AFTER AN INDIVIDUAL REVIEW OF THE PRISONER'S FELONY CONVICTIONS.~~
- ~~4. Submission to alcohol and drug tests as mandated ON A FINDING OF REASONABLE CAUSE THAT THE PRISONER HAS BEEN UNDER THE INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS DURING HOME DETENTION. RANDOM ALCOHOL AND DRUG TESTS WITHOUT REASONABLE CAUSE ARE PROHIBITED.~~
- ~~5. Payment of the GLOBAL POSITION electronic monitoring fee in an amount determined by the board of not less than five one dollars per day and not more than the total cost of the electronic monitoring unless, after determining the inability of the inmate to pay the fee, the board requires payment of a lesser amount. THE SUPERVISING CORRECTIONS OFFICER SHALL MONITOR THE COLLECTION OF THE FEE. The fees collected shall be returned to the department's home DETENTION arrest program to offset operational costs of the program. THE PRISONER'S PARTICIPATION IN THE PROGRAM SHALL NOT BE DELAYED OR EXCLUDED BASED ON THE PRISONER'S INABILITY TO PAY THE FEE.~~
- ~~6. Remaining at the PRISONER'S inmate's place of residence at all times except for movement out of the residence according to mandated conditions: (a) TO PARTICIPATE IN GAINFUL EMPLOYMENT OR OTHER BENEFICIAL ACTIVITIES; (b) TO OBTAIN IMMEDIATE AND NECESSARY MEDICAL CARE; (c) TO OBTAIN NECESSARY AND ESSENTIAL LIVING SUPPLIES; AND (d) WITH PRIOR APPROVAL OF THE SUPERVISING CORRECTIONS OFFICER, ANY OTHER ACTIVITIES THE OFFICER DEEMS NECESSARY AND APPROPRIATE. Adherence to any other conditions imposed by the court, board of executive clemency or supervising corrections officers.~~
- ~~7. Compliance with all other conditions of supervision.~~
- ~~8. Payment of a monthly home arrest supervision fee of at least sixty five dollars unless, after determining the inability of the inmate to pay the fee, the department requires payment of a lesser amount. The supervising corrections officer shall monitor the collection of the fee. Monies collected shall be deposited, pursuant to sections 35-146 and 35-147, in the community corrections enhancement fund established by section 31-418.~~

~~E. Before holding a hearing on home arrest, the board on request shall notify and afford an opportunity to be heard to the presiding judge of the superior court in the county in which the inmate requesting home arrest was sentenced, the prosecuting attorney and the director of the arresting law enforcement agency. The board shall notify the victim of the offense for which the inmate is incarcerated. The notice shall state the name of the inmate requesting home arrest, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the state department of corrections. The notice to the victim shall also inform the victim of the victim's right to be present and to submit a written report to the board expressing the victim's opinion concerning the inmate's release. No hearing concerning home arrest may be held until fifteen days after the date of giving the notice. On mailing the notice, the board shall file a hard copy of the notice as evidence that notification was sent.~~

~~F. An inmate who is placed on home arrest is on inmate status, is subject to all the limitations of rights and movement and is entitled only to due process rights of return.~~

~~F. If an PRISONER inmate violates a condition of home DETENTION arrest that poses a serious threat or danger to the community, or commits an additional felony offense, the board shall revoke the home DETENTION arrest and return the PRISONER inmate to the custody of the state department to complete the term of imprisonment as authorized by law.~~

G. IF A PRISONER VIOLATES ANY OTHER CONDITION OF HOME DETENTION, OTHER THAN SUBSECTION F OF THIS SECTION, THE BOARD MAY SUSPEND THE HOME DETENTION AND RETURN THE PRISONER TO THE CUSTODY OF THE DEPARTMENT FOR TERM OF IMPRISONMENT NOT TO EXCEED 30 DAYS FOR EACH VIOLATION.

H. THE BOARD SHALL CREATE A HEARING COMMITTEE FOR DETERMINATION OF VIOLATIONS OF CONDITIONS OF HOME DETENTION, AND IT SHALL PROVIDE FOR ONE APPEAL FROM THE COMMITTEE'S DETERMINATION TO THE SUPERIOR COURT. THE PRISONER SHALL BE AFFORDED ALL DUE PROCESS RIGHTS, INCLUDING THE RIGHT TO COUNSEL, AT ALL HEARINGS BEFORE THE COMMITTEE. ~~The ratio of supervising corrections officers to supervisees in the home arrest program shall be no greater than one officer for every twenty-five supervisees.~~

2011 SEP 28 PM 1:08

SECRETARY OF STATE

I. NOTWITHSTANDING ANY OTHER PROVISION IN THE LAW, A PRISONER SHALL BE RELEASED FROM HOME DETENTION AND TRANSFERRED TO AN UNSUPERVISED PAROLE PROGRAM AFTER THE PRISONER HAS COMPLETED THREE-QUARTERS OF THE SENTENCE OF INCARCERATION IMPOSED BY THE COURT WITH AT LEAST ONE-QUARTER OF THE SENTENCE COMPLETED IN THE HOME DETENTION PROGRAM. THE PRISONER SHALL COMPLETE THE REMAINDER OF THE SENTENCE ON UNSUPERVISED PAROLE. The board shall determine when the PRISONER supervisee is eligible for transfer to the UNSUPERVISED regular parole program pursuant to THIS SUBSECTION ~~section 31-411.~~

J. NOTWITHSTANDING ANY OTHER PROVISION IN THE LAW, A PRISONER MAY BE RELEASED FROM HOME DETENTION AND TRANSFERRED TO A SUPERVISED PAROLE PROGRAM AT ANY TIME AFTER THE PRISONER IS ELIGIBLE FOR HOME DETENTION. THE PRISONER MAY COMPLETE THE REMAINDER OF THE SENTENCE OF INCARCERATION IMPOSED BY THE COURT ON SUPERVISED PAROLE. THE BOARD, IN ITS SOLE DISCRETION, SHALL DETERMINE WHEN THE PRISONER IS TO BE TRANSFERRED TO THE SUPERVISED PAROLE PROGRAM PURSUANT TO THIS SUBSECTION. ~~This section applies only to persons who commit felony offenses before January 1, 1994.~~

K. THE ARIZONA SUPREME COURT SHALL IMPLEMENT A PROCEDURE TO ALLOW PRISONERS TO PETITION STATE COURTS FOR A VIOLATION OF THIS SECTION BY ANY GOVERNMENT OFFICIAL. ~~For the purposes of this section:~~

~~1. "Dangerous offense" has the same meaning prescribed in section 13-105.~~

~~2. "Serious offense" includes any of the following:~~

~~(a) A serious offense as defined in section 13-706, subsection F, paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k);~~

~~(b) A dangerous crime against children as defined in section 13-705. The citation of section 13-705 is not a necessary element for a serious offense designation;~~

~~(c) A conviction under a prior criminal code for any offense that possesses reasonably equivalent offense elements as the offense elements that are listed under section 13-705, subsection P, paragraph 1 or section 13-706, subsection F, paragraph 1.~~

L. DEFINITIONS. FOR PURPOSES OF THIS SECTION:

1. "SENTENCE OF INCARCERATION IMPOSED BY THE COURT" SHALL MEAN THE SUM OF ALL CONSECUTIVE SENTENCES, OR THE SENTENCE OF THE LONGEST DURATION IN A GROUP OF CONCURRENT SENTENCES.

2. "ACCESS TO A SUITABLE RESIDENCE" SHALL MEAN THAT THE PRISONER OWNS, CO-OWNS, OR HAS THE ASSENT OF THE OWNER TO OCCUPY, ANY SINGLE FAMILY HOUSE, APARTMENT, CONDOMINIUM, TOWNHOUSE, DUPLEX OR SIMILAR RESIDENTIAL PROPERTY, AND THE RESIDENTIAL PROPERTY IS COMPATIBLE WITH THE REQUIREMENTS FOR GLOBAL POSITION ELECTRONIC MONITORING.

Section 4. Severability.

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECRETARY OF STATE
2011 SEP 28 PM 1:08